

Kaua'i Police Commission
Open Session Meeting Minutes of
May 25, 2018

Approved on June 22, 2018

The Regular Open Session Meeting of the Kaua'i Police Commission was held at the Līhu'e Civic Center at 9:00 a.m. at the Mo'ikeha Building, Meeting Room 2A/2B. The following Commissioners were present:

Mary K. Hertog, Vice Chair
Catherine Adams
Leina`ala Jardin
Kevin Mince
Roy Morita

Excused
Gerald Bahouth, Chair

Also present:

Boards and Commissions Support Clerk Mercedes Omo, Board and
Commission Administrator Nicholas R. Courson,
County Attorney Mauna Kea Trask, Deputy Chief of Police Michael Contrades, Assistant Chief
Robert Gausephol, Detective/SOPO Representative for the district of Kaua'i Chris Calio,
Acting Captain Mark Ozaki, Officer of the Month Detective Colin Nesbitt and numerous officers
in the Kaua'i Police Department

CALL TO ORDER

Chair Hertog: Good morning. It's 9:00 a.m. and the Police Commission meeting for 25 May is now in session. If you would, please turn off your cellphones or put your phones on mute. Also, if there is anyone in the audience who would like to address the Commission, now is your opportunity to do so. Seeing no one, we are going to press on. I ask that you be patient with us because we are going to go in and out of Executive Session a couple of times to accommodate everyone's schedule. First up, is Detective Chris Calio, from what I understand would like to make a few comments.

Detective Calio: Good morning Chair Hertog and Commissioners. I'm here on behalf of the SHOPO (State of Hawai'i Organization of Police Officers). I understand that there are some issues and concerns the Commission wants to discuss with the union. I also understand that those issues cannot be discussed in this setting so, I would like to respectfully invite all of you to our Chapter Chair Meeting on June 6, 2018 at 01700 hours. I've been informed by the State Board of Directors (as I'm a member) that you are allowed to attend our meetings at the Chapter.

Vice Chair Hertog: Where is your meeting at?

Detective Calio: It's at our SHOPO Office, on Rice Street, right next to the Garden Island BBQ Restaurant. Thank you.

CHAIR'S COMMENTS/ANNOUNCEMENTS

Vice Chair Hertog: Thank you. The only comment I have today is that it was a great graduation yesterday. I appreciate the great attendance from all of the officers who there to welcome the new police officers into the Kaua'i Police Department. Okay, at this time, we're going ahead and recognize the Officer of the Month.

RECOGNITION FOR OFFICER AND EMPLOYEE OF THE MONTH

Deputy Chief Contrades: Good morning, at this time, I would like to call upon, Acting Captain Kenneth Cummings to read the recognition for Office of the Month Detective Colin Nesbitt.

Acting Captain Cummings: Captain Kenneth Cummings for the record. Good morning, Vice Chair Hertog, Commissioners and Chief. To my left is Detective Colin Nesbitt who was nominated as the Officer of the Month for May 2018. I have a little write-up that I will read to all of you.

On March 22, 2018 the special focus section of the Investigative Services Bureau conducted a special project in and around the east Kaua'i Professional Building in Kapa'a because of the increase in burglaries and UMVE's in the area. The objectives of the project were to conduct surveillance, gather intelligence, identify suspicious vehicles and suspects and apprehend any individuals caught in the act of a crime. While conducting the project a suspicious vehicle was observed pulling into the northern entrance of the East Kaua'i Professional Building second story parking lot. The vehicle was operated by an adult male who entered the building, then exited and went back to his vehicle. Detective Nesbitt observed the male subject exhibiting strange behavior in and around his vehicle and based on Detective Nesbitt's training and experience, he believed that the male subject was getting ready to engage in consuming illegal narcotics. Detective Nesbitt continued to observe the male subject and observed that the male subject was continually falling asleep and waking up which is commonly referred to as the "drug nod" which is consistent behavior for opioid addiction. Detective Nesbitt approached the subject's vehicle and observed a piece of tin foil with black burn marks in the subject's hand. The burnt tin foil is commonly associated with individuals who smoke heroin as well as other illegal narcotics. Detective Nesbitt approached the male subject and advised him of his constitutional rights and questioned him regarding the drug paraphernalia that was observed in plain view.

Detective Nesbitt was able to get a confession from the suspect stating that he had heroin, marijuana and methamphetamine in the vehicle. The subject was arrested without incident and transported back to cellblock for booking. The arrestee's vehicle was seized and transported to the Kaua'i Police Department evidence warehouse pending the execution of a search warrant. On March 28, 2018 a search warrant was executed and heroin, marijuana and a smoking device with methamphetamine was recovered in the vehicle.

Because of Detective Nesbitt's keen observation, not only was he able to recover illegal narcotics from the vehicle, he prevented the male subject from driving off which would have put the entire community in jeopardy. Ladies and Gentlemen, I present to you, the Kaua'i Police Department's Officer of the Month Detective Colin Nesbitt.

Deputy Chief Contrades: Detective Nesbitt, great job. In recognition of your outstanding and exemplary service to the community on behalf of citizens of the County of Kaua'i, State of Hawai'i and members of the Kaua'i Police Department. I would like to present this certificate to you for your exceptional work while assigned to a special project. Your keen observations of the male subject suspicious behavior in a parked vehicle, subsequent questioning and obtaining of a search warrant for the vehicle that he occupied lead to the recovery of drug paraphernalia. Without a doubt your hard work and diligence were significant factors in the recovery of these items. Your efforts are a true reflection of your dedication to your profession and commitment in keeping our community safe. Congratulations and thank you for doing such a great job.

Vice Chair Hertog: Officer Nesbitt, thank you so much. I think this is the second or time we have seen you up here being honored in this way. Heroin has become a huge problem nationwide and even here on our beautiful island. Thank you for your enforcement activities in keeping the community safe. Commissioners if you would like to say a few words, please feel free to do so now.

Detective Nesbitt: Thank you.

Mr. Mince: Colin, great job, obviously. How big of a problem is heroin on this island?

Detective Nesbitt: It has become a huge problem and he believes it has taken the place of opioids, oxycodone as well as other stuff that are prescribed, but there has been pressure putting that and now, heroin is coming in.

Mr. Mince: That dovetails on what we learned at the Police Commissioners conference from the Drug Enforcement Agency (DEA) agent. Thank you very much for your efforts.

Detective Nesbitt: Thank you Sir.

Ms. Adams: As a healthcare provider, we are under (inaudible) to reduce the use of opioids and I think what you're seeing is the spill over. So, thank you, and I know it puts all of our communities in jeopardy, so again, thank you for your diligence.

Mr. Morita: Thank you, Officer Nesbitt for taking those drugs off of the streets. I understand that it's an uphill battle for you guys because there is a so much drugs out there, but every little bit counts so, I appreciate all of your hard work.

Ms. Jardin: Mahalo.

Vice Chair Hertog: If you like say anything to the Commissioners or to your fellow officers, now is your time to do it.

Detective Nesbitt: Yes. I would like to thank the group of people that I work with. It's been a continuous effort on all of us, not just myself. As the Lead Investigator, I have a lot of the team members who are working with me to meet our goals and keep the community safe from this problem. Thank you.

Vice Chair Hertog: Because we are switching the agenda around what I would like to do is call for a motion to take some our agenda items out of sequence.

Ms. Adams: So moved.

Mr. Morita: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. Nays. Hearing none. The motion carried 5:0. Next up, while we're still in Open Session, I would like to bring up County Attorney Mauna Kea Trask to speak to us.

Mr. Trask: Aloha, for the record, Mauna Kea Trask, County Attorney. In regard to item ES 2018-020, I believe it's a complaint that was filed by Mr. Gomes and I believe, he also wants to speak which is permitted because it's an appropriate agenda item in Open Session. As the Commission is aware there is a three minute time limit on talking in which any member of the public can speak and thereafter (I believe) the rest gets dealt with in Executive Session. So that's just the process.

Vice Chair Hertog: Correction, its item ES KPC 2018-018.

Mr. Trask: Thank you. I'm sorry.

Vice Chair Hertog: Okay, we are in Open Session. Mr. Gomes would you like to come up and address the Commissioners? Please come up and state your name for the record.

Mr. Gomes: Good morning and Aloha Commissioners. My name is Lance Kamuela Gomes and I'm here as a Konohiki registered under federal laws. Basically, we filed a complaint because it's in our constitutional rights which covers International Law Title 18, subsection 2441 War Crimes and Title 18, subsection 1091 which covers Acts of Genocide, which is basically a denial of ones rights.

Its simple things like, we're happy to be able to live here in Hawai'i (these are our problems) instead of living somewhere else in the world. Basically, what we're asking for is that our rights (it's in the law) are followed and respected. As far as access, it comes down to the First Amendment Freedom of Religion. I filed this complaint because we're going down to our families Heiau to clean it, plant food and Ti leaves and we are not harming anybody. I understand that it does threaten the County and the State's system relating to tax map key (TMK) and all of that stuff and what's been called private property. With all due respect, I'm happy to have police officers and everything else that's in place, but what we want is to be protected and served our rights instead of having our rights violated.

We don't want to move towards any federal laws suits for human rights violation and war crimes because it would be bad publicity for the Department. All we ask for our rights to be upheld and for the officers who are enforcing the law to follow the law. What's happening is, not all officers are aware or understand our rights because we talk about it all of the time, in every confrontation. We just need access. The other thing, I wanted to say is, we're being charged with criminal trespassing while on family lands; it's our families.

He's my uncle (he just doesn't know it). The bottom line is the Hawai'i Revised Statutes violates the United States Constitution and that's why we're trying to make a change. We need to be able to go home to our lands and do things like pray and have access to certain things in order to do whatever, we need to do. If this is America (the 50th State of America, Hawai'i) I would like to say, please uphold the United States Constitution, the First Amendment Freedom of Religion and the Separation of Church and State. We're being charged as criminal trespassers when we are the legal lineal descendants of our Kupuna who built these Heiaus and who prayed over these special places. We get into trouble for trespassing because the system is designed in a manner to keep people out and that right there says whoever the private property owner is whether it's the State, County or anyone on that side of things. The law says we have the right to access, so the gates and the fences are actually violating the law according to Hawai'i Revised Statute Section 7-1. Any fee simple parcel on or within allodia lands which we have the Royal patent for. Wahiawa is an allodia land which is titled to our descendants forever. Any fee simple parcel within all roadways and waterways are supposed to be cleared, so it's actually the big yellow gates that's violating the law according to Section 7-1.

So, what we're dealing with is the illegal land holdings in Hawai'i, the money and everything else. The State and the County is trying to perpetuate whatever it needs to do to protect what it created and that's what we're faced with. All we want to do is exercise our rights with aloha and with love which is what we're doing. We may come off sometimes in certain ways, but it's really hard not to be defensive when faced with a situation where there's no book on how to exercise your rights so we have to go against the government because they are not giving us our rights. We don't want to go against anybody or anything, we just want to be able to have access without having to deal with police officers coming down and violating our rights and threatening us with arrest. That's what you call terroristic threatening; we're praying and stuff down there, then an officer comes down not really understanding our rights, and when I try to explain our rights, the police officer would say, I don't know. I'm sorry. I'm just doing my job. That's the sad part.

Vice Chair Hertog: I will allow you only a couple more minutes.

Mr. Gomes: Okay. We're just doing our job by standing up for our rights; it's simple as that. We're not trying to claim that we are the king or anything like that. We are the lineal descendants. We are all family and we are all God's children (every single one of us) and I see God in every single one of you. I also wanted to give you guys a notice that talks about the laws, International Laws through Title 18, Section 2441, and like I was explaining these are war crimes and they are in the United States Constitution. We don't want to charge anyone with war crimes because we feel it's simpler than that. If it comes down to meeting with you folks to try to work something out where we have a mutual understanding on our rights on access point to

where the Heiaus are. These are sacred sites that we have rights to. We can work with the private land owners, the County or State or whomever it is for the access for the time being. We are being drawn to these places its Mānā. Mauna Kea can I serve this to you?

As far as that, there's some TMK numbers on there as well and like I said we're moving forward with aloha. All we're doing is exercising our rights and we don't want to feel threatened. We shouldn't feel threatened by law enforcement or anything like that. We just want to get on the same page to ensure that all of us have a mutual understanding on our rights that is in the law.

State law and kingdom law is under our legal occupation and we're supposed to follow kingdom law without the aid of a single statute. We have numerous codes and the Hawai'i Revised Statutes which in fact is a constitutional violation, so is the state law and county ordinance is in direct contradiction with the United States Constitution. I know that I'm out of time, so thank you Commissioners, and like I said, we're moving towards aloha.

The TMK numbers in there are the sacred sites that we have access to so we want to give you guys notice. It lists all of the laws. I want to make sure that you guys understand that in every law we have the right to access. Do you guys understand that?

Vice Chair Hertog: We got it. Thank you. Okay, next up is County Attorney Mauna Kea Trask.

Mr. Trask: Aloha, Vice Chair Hertog and members of the Police Commission. For the record, Mauna Kea Trask, County Attorney. I've been ask by the Commission to discuss some of these principles that have been mentioned by Mr. Gomes.

It's a matter of legal information regarding the current status of native Hawaiians as an indigenous population. What they're rights and legal protection are under current state and federal law as well as international law, as well as, what the County's appropriate role is, in all of this. To be clear, this does not constitute as legal advice, it's only legal information. As a matter of Hawai'i state law, the Hawaiian people are recognized as the only Indigenous Aboriginal Mari people of Hawai'i. However, this political recognition is not extended to the native Hawaiian people at the federal level. The legal situation regarding native Hawaiian sovereignty and self-determination is very complex and while native Hawaiian people do enjoy a certain state and constitutional rights as well as entitlements separate from the non-native population, but they must as a political group nonetheless comply with all county, state and federal laws, like everyone else.

In an effort to bring clarity to this issue, I'm going to discuss the following points that generally comes under the purview of native Hawaiian sovereignty like, I previously stated in the beginning. The County's position is that native Hawaiian people are separate and recognized political group. They have separate rights and duties aside from the non-native Hawaiian population and they should be approached with compassion and respect. The County Attorney's Office have conducted trainings numerous times with the Kaua'i Police Department regarding the following items. And these items are not up for argument. These items are established laws both in the Hawai'i State Courts, US federal Courts and complies with juris prudence that

actually predates the State of Hawai‘i, the Territory of Hawai‘i and the Republic of Hawai‘i and is actually a result of the Supreme Court of the Nation of Hawai‘i going back to the 1850’s.

1) The native Hawaiian people have never relinquish their sovereignty and the indigenous Hawaiian people never directly relinquish their claims to their inherit sovereignty as the people or over their national lands of the United States; either through their monarchy or plebiscite or referendum. (This is true)

This is pursuant to the Apology Law PL103150 November 23, 1993 (this is a federal law) where Congress apologized to native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawai‘i on January 17, 1893 with the participation of agents and citizens of the United States and the deprivation of the rights of the native Hawaiians through self-determination (PL103150).

2) The Apology Law is the basis for the claim of native Hawaiian sovereignty (This is not true).

The US Supreme Court in deciding Hawai‘i versus Office of Hawaiian Affairs 129 Supreme Court 1436 2009. In 1993, Congress Joint Apology Resolution apologized on the United States rule in the overthrow of the Hawaiian Monarchy and to be clear there is nothing in this resolution (was quoted) intended to serve as a settlement of any claims against the United States.

Mr. Trask: To put it plainly in 1993, the United States said sorry for what they did because it was not right, but did nothing thereafter.

3) The Kingdom/Nation of Hawai‘i still exists (this is not true).

According to Stably 6 Hawai‘i 143 which the firm Nishitani, Debaker 82 Hawai‘i 281 and State Valarenzo 77 Hawai‘i 219. And I quote, “whatever may be said regarding the lawfulness of the provisional government that in 1893, the Republic of Hawai‘i 1894, the Territory of Hawai‘i in 1898 and the State of Hawai‘i February 9, 2002 is now a lawful government”. So whether you like it or not the State of Hawai‘i does exist. On a philosophical level, it’s an inner subjective reality like all political bodies, but as we all know, inner subjective realities are as real as anything else.

4) Neither the Courts, the State of Hawai‘i or the US Government have jurisdiction over native Hawaiians (This is false).

Both state and federal courts have stated that defendants and I quote, birth descendants of native Hawaiians reject the concept that native Hawaiians are subject to the government and court under the Hawai‘i State law.

5) International Law prohibits lawful action against native Hawaiians (this falls under what is known as war crimes and genocide arguments). This is false. International Law takes precedence over state statutes, but in only limited situations. The general rules have been established by the US Supreme Court in *Skiriotes versus the State of Florida* 313 US 69 (going back to 1941). International Law is part of US law, and as such, is a law of all the states of the union, so it is a part of our law for the application of its own principles (meaning international principles) which concerns the international rights and duties and has nothing to do with domestic rights and duties. The State of Hawai‘i has a legitimate interest in the conduct of persons within its jurisdiction, and as such, the people’s conduct is amendable to reasonable state regulations regardless of any international law. And that’s from *State v. Marley* 54 Hawai‘i 450 1973.

6) The status of crown lands and other ceded lands as owned by other than the current title holders.

The US Supreme Court established in *Hawai‘i versus Office of Hawaiian Affairs*, that after the overthrow of the Hawaiian Monarchy in 1953 Congress annexed the territory of Hawai‘i pursuant to the New Land Resolution under which Hawai‘i ceded United States, and I quote “absolute fee and ownership of all public government and crown lands”.

7) Native Hawaiians have rights to beyond private property.

The State reaffirms and shall protect all rights both customarily and traditionally that are being exercised for subsistence cultural and religious purposes which belong to ahupuaa tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778. Which is subject to the right of the State to regulate such rights according to the Hawai‘i State Constitution Article 12 Section 7. However, the court found in *Pash versus the Hawai‘i County Planning Commission* that unreasonable or non-traditional uses of land by non-owner Hawaiians are not permitted. The court found in *State versus Hāna`pi* 89 Hawai‘i 177 1998, that it is the obligation of the person claiming the exercising of Hawaiian rights to demonstrate that the right is constitutional protected. If the property is deemed fully developed (for example zoned land) and used for residential purposes with existing dwellings, improvements in infrastructure, it has to be always consistent to permit the practice of a traditional customary native Hawaiian rights on such property. So, for any of you who own property that has a house on it (your typical residential property) a native Hawaiian cannot go on to your property and claim traditional and customary rights. So, the burden (again) is upon the defendant who is claiming these rights. Where the defendant failed to produce sufficient evidence to support a claim of the exercise of a constitutionally protected native Hawaiian rights and knowingly entered into a landowner’s property (which was fenced) in a manner to exclude other, the trial court properly concluded that the defendant was unlawfully/improperly in violation of 708 8141 Criminal Trespass. Also known as the Hāna`pi defense.

Briefly, the Hāna`pi defense allows the defendant in court to establish that his or her conduct is constitutionally protected. The elements are as follows:

1) The defendant must qualify as a native Hawaiian within the guidelines said in PASH (which is essentially descended from inhabitant of the island prior to 1778).

2) The defendant must establish that the right is constitutional protected as a native Hawaiian practice.

3) The defendant must prove that the exercising right occurred on undeveloped or less than fully developed property and if satisfied, the court will apply a balancing test to determine whether the defendant's assertion of native Hawaiian privilege will negate the conviction. It must be determined whether the defendant's conduct was reasonable by balancing the states interests in regulating the defendant's activity with the defendant's interest in conducting the traditional customary practice. If the state process exists, then the defendant must avail him to the process.

That's State Armitage Supreme Court number 297794 2014. In this case, some members of, I think it's the reinstated Hawaiian government, but it was Henry Noa's group what went to Kaho'olawe without PKO or DLNR's permission and planted a flag and tried to establish their nation upon that island. As we all know, there are plethora of unexploded ordinances on that island and it's an extremely dangerous place to be. The court found amongst other things that traditional customary rights do not include First Amendment Rights. Traditional customary rights do not include establishing a native Hawaiian Kingdom and traditional and customary rights do not allow you to go on an island containing bombs without getting permission first. There is a process that exists and you need to avail yourself to that process.

In regard to the Royal patent argument, a Royal patent is not evidence of ownership; a Land Commission award is evidence of ownership. There are cases that go back all the way to the 1850's, there is Bronsfeed Smith case. Essentially, what happen in that case is native Hawaiian tenants submitted claims to the Land Commission under the Kuleana Act of 1850. But King Kamehameha III (at that time) gave land grants to non-Hawaiians and those land grants contained reservation language (which we are all familiar with) that are subjective to the rights of native tenants. So, those people got their land grants which was later (although native Hawaiians had already placed their claims with the Land Commission) adjudicated and granted after King Kamehameha III gave patents to non-Hawaiians. Those non-Hawaiians (in the mid-1900 century) attempted to eject the native Hawaiians from their property (kuleana's) because the patents were pre-dated to the Land Commission's awards. However, the nation of Hawai'i Supreme Court stepped in and said that it was not pono and illegal and the reason why is by that time (1850's) Kauai Ke'ole had already promulgated two very important documents one of which was a Declaration of Human Rights in 1839, known as the Magna Carte of the Pacific whereas, the King in his wisdom abdicated a degree of the royal power to a constitutional government. He said certain rights are contained within the people ire-respected of the crown and these are your basic rights to property, to freedom etc. Thereafter, in 1840, he promulgated the First Constitution of the Nation of Hawai'i and subsequent to that there was the Constitution of 1852, 1864, 1887 and 1892 followed by the overthrow in 1893. The nation of Hawai'i Supreme Court stated at that time given the Declaration of 1839 and 1840, the King in his patent grants to these non-Hawaiians could not give any right beyond his authority which did not include subverting or overriding those grants by the Land Commission.

In other words, if you have a Royal patent grant with the King's signature on it, it's subject to the law, it is not a free and clear gift from the crown; there are laws in the nation of Hawai'i that dates back to the 1835's.

In closing, the courts made it very clear and the County of Kaua'i encourages and works with the Native Hawaiians in many ways, shapes and forms. The future of the Native Hawaiian issue is what's called a political question, if you look at the jurisprudence surrounding this issue, it is up to Congress, Hawai'i State Legislators and the Native Hawaiians to precede their rights in the political arena. There is no res-pit in the district court, the circuit court or the Supreme Court via the state or the feds because it's a political question. The courts will not force a county to make laws or recognize anyone, which is unfortunate, but very clear. If there was any other way believe me, I would not be working for the County of Kaua'i. Furthermore, international law is not applicable within domestic proceedings and any reference to the International Criminal Court or the International Court of Arbitration are venues for state entities against other state entities. Also, the United States occupies a permanent seat on the Security Council and can single-handedly veto any action of the United Nations. There was a case *Lewis v. Larson* (he believes it's the Kingdom of Hawai'i) where they attempted to sue themselves in the International Court of Arbitration to establish that the Kingdom of Hawai'i still existed, but because the United States was not a party to the proceeding (and will never be a party to any proceeding) they are not signatories to any of these treaties that subjects them to jurisdiction above and beyond their own state borders. The court said there was nothing to rule on and dismissed the case.

Ms. Adams: I have question. Can you spell the word - I'm trying to translate the word hanapi? It's between the defendant and the courts, correct?

Mr. Trask: Its spelled is Hāna pi. Yes, it's between the defendant and the courts.

Ms. Adams: So bringing this complaint to us as a semi-judicial ruling body- Is this the correct place the complaint should be going to?

Mr. Trask: Yes, your jurisdiction is to look at the officers' actions to see if it was appropriate.

Ms. Adams: Yes.

Mr. Trask: The Hāna pi defense is what's called an affirmative defense, it's like self-defense. You can called into court because someone accuses you assault and you establish that they tried to hit you first and you were defending yourself. Same thing with Hāna pi, you go into someone else's land, you can claim that defense but you have to as the defendant must affirmatively establish it. It's not something the state has to disprove.

Ms. Adams: Okay.

Vice Chair Hertog: Are there any other questions for County Attorney Mauna Kea Trask? Okay, thank you Mauna Kea. Is Mr. Ferreira here? He was the other individual who made a statement. Alright, at this point in time, I would like to thank you very much and we appreciate

your comments. Thank you Mauna Kea as well. We will consider the issue in Executive Session. I do have a couple of questions, if I can. Mr. Gomes can you come up to the table?

Where exactly were you when you received this citation?

Mr. Gomes: We were in an area known as Camp 1 which is Wahiawa Bay. It's in between the ahupua'a or the Ili 'a velele in the ahupua'a of Kalāheo. It's where Kaua'i Coffee is.

Vice Chair Hertog: Have you been there before cleaning up the beach and doing other things?

Mr. Gomes: Yes, and the trespassing charge was given because they said that all of the gates were locked (and that's another issue). We have a deal worked out with the lessee for the quarry which is right down there at the bay. He gave us the key to the gate because it's within our rights within the law that we should have access so he feels that we should and he allows us to have access. That's the thing we are not breaking or entering or anything like that and we are actually on registered state historic site.

Vice Chair Hertog: Okay, you gain access with a key that you were given.

Mr. Gomes: Yes, then we drove down through the quarry, then we accesses down to the beach.

Vice Chair Hertog: Who gave you the key?

Mr. Gomes: The owner of the quarry down there.

Vice Chair Hertog: Okay.

Mr. Gomes: I wanted to confirm to what Mauna Kea said about the international law not be applicable. It is applicable through United States law which is why I referenced the US Title 18, Subsection 2441 which is war crimes that covers; that makes international law applicable to states through the federal law. And also, Title 18, Subsection 1091 Acts of Genocide is basically the simplest form of genocide by denying someone their rights and threatening them with arrest. Like I said, we're doing this with aloha and we do have our rights. The State is actually illegal as Mauna Kea said it was accepted into the union with a joint resolution. We all know on this planet that we call earth and our home that you can't annex any other country on a joint resolution, you need a Treaty of Annexation. So, that's the fraud and stuff that we talked about which is what we are trying to go against. Respectfully.

Vice Chair Hertog: Okay, I'm going to have to cut you off right here. Thank you so much for answering my questions.

Mr. Gomes: Thank you. Aloha.

Vice Chair Hertog: Alright, at this time we will press on with the Open Session. We will continue our discussion in Executive Session where we will have a chance to review the body worn camera footage. Okay, next is the Recap of the Police Commission's conference. I'll ask Commissioner Mince to do that very quickly.

Mr. Mince: Thank you Chair.

Mr. Trask: Pardon me. I'm sorry, but I have about 20 minutes before I have to leave.

Vice Chair Hertog: Do you want us to go into Executive Session?

Mr. Trask: Yes.

Vice Chair Hertog: Okay, but before I do that let me read the Executive Session, then we'll go into it. I'm just going to abbreviate this particular complaint.

ES KPC 2018-018

Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer or employee of the County, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and or liabilities as they may relate to the following agenda item.

New Formal Notarized Complaint No. KPC 2018-008 filed against an officer in the Kaua'i Police Department.

Vice Chair Hertog: The complainant alleges cultural genocide. Can I get a motion to take us into Executive Session?

Ms. Adams: So moved.

Mr. Morita: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. Nays. Hearing none. The motion carries 5:0.

At 9:40 p.m. the Commissioners entered into Executive Session.

At 10:05 a.m. the Commissioners reconvened to Open Session.

Chair Vice Hertog: I'm going to cite the following Hawai'i Revised Statutes to take us back into Executive Session.

ES KPC 2018-019

Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4) the purpose of the Executive Session is for the Commission to consider the hire, evaluation, dismissal, or discipline of an officer or employee, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission’s and the County’s powers, duties, privileges, immunities, and or liabilities as they may relate to procedural issues in the Kaua‘i Police Department.

Vice Chair Hertog: I need a motion to return back into Executive Session.

Mr. Mince: So moved.

Ms. Adams: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. Nays. Hearing none. The motion carries 5:0.

At 10:06 a.m. the Commissioners reconvened in Executive Session.

At 10:25 a.m. the Commissioners reconvened in Open Session.

Vice Chair Hertog: Alright, we are back in Open Session, but before we get to the Chief’s Monthly Reports and the approval the minutes, I would like a real quick recap of the Commissioners conference that was held on the Hawai‘i Island earlier in the week. Commissioner Mince if you would do the honors, please.

RECAP OF THE POLICE COMMISSIONERS’ STATE CONFERENCE THAT WAS RECENTLY HELD ON HAWAII ISLAND FROM MAY 21-22, 2018.

Mr. Mince: Yes, thank you Chair. We attended the conference in Kona and it was well attended by the other islands and they had some pretty good speakers. I think, the highlight speaker was the new DEA (Drug Enforcement Agency) Supervising Agent from Honolulu, who gave us a really positive update on what they’re doing on the opioid crisis. He said look for some amazing things to happen in the next couple months here in the islands. Several of the other presentations dealt with training sessions as far as, the Commission’s Accreditation for Law Enforcement Agencies (CALEA) and Recruitment. But the highlight (at least for me) was the roundtable discussion with the other Commissions. It was real obvious (to me anyway) that we are ahead of the other Commissions as far as what we do; the things we asked and the actions we’ve taken. A lot of them are struggling internally in terms of what their powers are and what they can and cannot do. The end result of that was the other Commissions are now looking at us saying for direction. We kind of emulated that.

Vice Chair Hertog: I have to say, the Kaua‘i Police Department is ahead of the other Departments areas such as the body worn cameras, dropping the recruitment age to 20 1/2 and other initiatives KPD has taken like utilizing drones. So kudos to KPD on doing that.

APPROVAL OF THE OPEN SESSION MEETING MINUTES OF APRIL 27, 2018

Vice Chair Hertog: Okay, we've looked at the meeting minutes. Does anyone have changes to the minutes? If not, could I get a motion to approve the minutes?

Ms. Adams: So moved.

Mr. Morita: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. Nays. Hearing none. The motion carries 5:0. Deputy Chief Contrades over to you on the Monthly Reports, please.

Chief's Monthly Reports, Pertinent Updates and Announcements

1. Administrative and Technical Bureau Reports
2. Year Report as of April 30, 2018
3. Investigative Services Bureau
4. Calls for Service and Incident

Deputy Chief Contrades: Good morning, Vice Chair and members of the Commission. I just wanted to reiterate how well yesterday's graduation went and kudos to our staff for doing such an awesome job. I thought it was a little different having the Taiko Drummers perform (which was a last minute addition) but it was pretty cool. I also want to thank Acting Assistant Chief Mark Ozaki and his training cadre for putting out such a great recruit class and we look forward to seeing more good things from them in the future.

For the Commissioners who attended yesterday's graduation, thank you so much for being there; it's very much appreciated. As far as recruitment goes, we have five new recruits starting on June 1st. They will be receiving two weeks of training and another two weeks of field training in cellblock which will help a great deal in terms of personnel shortages and reducing overtime. So while that's happening, we have another five recruits that are currently going through background checks. They already went through their initial pre-psychological test and are now, heading to full background checks so (in total) we will have ten new recruits.

For your information, on May 20th three candidates passed their physical readiness standard test and we have one (potential) candidate from the Honolulu Police Department who wants to transfer so in total (knock-on-wood) we'll have 14 candidates. The next written exam is scheduled for June 4, 2018 and as of right now, we have 30 applicants who signed up, but that doesn't mean all 30 will show. But according to our staff the numbers (as of right now) are higher compared to the six or seven applicants we use to have in the past. Finally, we will be conducting monthly testing and hopefully the next class will start in September.

Vice Chair Hertog: Thank you. Are there any questions for the Deputy Chief concerning the various bureau reports? Hearing none. We will press on. The next item is KPC 2018-04, but I think we're going to have to wait until Mr. Trask gets back to address that. He was going to talk to us about whether or not we can legally form a PIG (Permitted Interaction Group) for recruiting purposes. Okay, the next item is KPC 2018-06.

KPC 2018-06

Discussion and possible decision-making on revising the Kaua'i Police Commission Rules on Administrative Practice and Procedure to reflect the Intermediate Court of Appeals decision of June 2016 regarding the discipline of the chief of police, commission oversight and supervision of the chief and KPC 2018-08 Discussion on formalizing the Police Commission's agenda. On-going

Vice Chair Hertog: Commission Mince, I would ask you to take care of this since you met with Mauna Kea yesterday.

Mr. Mince: This is a follow-up to the item that I introduced at the last meeting about including information on what we can and cannot do (relative to the court decision) into our rules. Originally, I was going to develop the language and sent it to all of you and have you comment on it, but we changed that so Mauna Kea could comment on it first.

I met with him yesterday and he is in favor of some of the things I recommended as far as having the information in the beginning of the rules so any new commissioner or any civilian could pick up a copy of our rules; read the introduction and have a good understanding of what we can and cannot do, what powers we have and what powers we don't have. We had some disagreements, but we are working our way through it. The two big things that was brought up was how we are going to handle personnel complaints, but we have to wait until Mauna Kea gets back to us to see if we are going handle all complaints and not KPD, and if that's the case, then we are going to have to work with KPD on a process. So, there was no sense for me to send it to you if it's all going to change anyway. Then our conversation got into what things we can and cannot supervise the Chief on. There are things we have to work out in terms of what we are entitled to by the Charter and what we are not entitled to by Charter. So (again) we're working our way through that. Mauna Kea invited several of us to meet with him (again) to try to find tune those things I just talked about so once that happens we can have a roundtable discussion on it.

Vice Chair Hertog: Okay, so we'll carry this as an on-going item for the next meeting.

Mr. Mince: Chair, if I might, the next item dovetails on that.

Vice Chair Hertog: Right. Discussion on formalizing the Police Commission agenda.

KPC 2018-06

Discussion on formalizing the Police Commission agendas.

Mr. Mince: Yes. One of the things, I recommended the last time was that we have some type of a formalized agenda and include that in our rules much like the Planning Department does. This was part of what I showed Mauna Kea yesterday, he was okay with most of it. Everything new is in blue and I included how we as Commissioners can get items placed on the agenda in open and an executive session. He was okay with most of it, but he had couple concerns that had to do with executive session stuff like not having specific names or issues to tag on to those. So (again) we're working our way through that.

He didn't particularly like the term "old business" he wanted to use the term new business. So those are some of the minor things that we can change. Anyway, if anybody has some things they want to change regarding this part of the new rules, please let me know.

Vice Chair Hertog: Okay. So if any of you have any feedback, please give it to Mercedes.

Mr. Mince: That's it Chair.

Vice Chair Hertog: Alright. So that will be on-going as well Mercedes. The next item is KPC 2018-10.

KPC 2018-10

Brief discussion on the Chief's Evaluation Process for the period of October 2017 to June 2018.

Vice Chair Hertog: As you remember, a couple of meeting ago, we agreed to realign the Chief's reporting period to the County's fiscal calendar year so what we are going to do is, give him a six-month evaluation for this period in time and we are going to use the long form, which we agreed to do last month. I think, Mercedes send the form out to everybody yesterday. Commissioner Jardin, I know that you won't be able to do an evaluation because this is just your second month with us. There may be some areas where we cannot evaluate the Chief because he's been out, but I would ask that you start working on the evaluation forms because it's due on June 30, 2018 and we would want to be able to give it to the Chief. Any questions or comments?

Mr. Mince: Point and I mentioned this to Mercedes that the word document she sent us (this actual form itself) actually contains the long form and the short form. There was some confusion the last time we did this where some people did both. So to clarify, use the long form; you don't have to do the short form which is a six-month evaluation.

Vice Chair Hertog: Also, if you feel that you cannot evaluate for any period of time just state so on the form. Alright, the next item is KPC 2018-11.

KPC 2018-11

Public announcement for notarized complaints no. KPC 2018-003 and KPC 2018-005.

Vice Chair Hertog: In the back of your packet there are two letters signed by Chair Bahouth and I'll just read them quickly, then we'll accept them.

Public announcement for KPC 2018-003

After a diligent inquiry by the Commission, in which the Commissioners reviewed all available materials, the Kaua'i Police Commission determined that although the incident upon which the charge is based did occur there was insufficient evidence to support the allegations. All parties have been properly notified of the Commission's final disposition. This officially concludes the Commission's review of notarized complaint KPC 2018-003.

Public announcement for KPC 2018-005

After a diligent inquiry by the Commission, in which the Commissioners reviewed the complaint, the Kaua'i Police Commission determined that the complaint was written by a third-party therefore could not consider the complaint. This officially concludes the Commission's review of notarized complaint KPC 2018-005.

Vice Chair Hertog: Can I get a motion, please to accept these two announcements?

Mr. Mince: So moved.

Mr. Morita: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. Nays. Hearing none. The motion carries 6:0. Alright, moving on to the announcements.

ANNOUNCEMENTS

Next regular monthly meeting - Friday, June 22, 2018, 9:00 a.m. at the Mo'iikeha Building, Meeting Room 2A/2B. Executive Session to follow.

Vice Chair Hertog: Alright, I already read a portion of the Executive Session portion so, I'm going to read it real fast, and then I will take a motion to go into Executive Session. Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), we are going to discuss the following agenda items.

ES KPC 2018-001

Monthly update by Office of Professional Standards Lieutenant James Miller on the status of the Department's disposition on all formal notarized complaints that were filed with the Kaua'i Police Department, including the complaints that were filed with the Police Commission and referred to the Office of the Chief for further review.

ES KPC 2018-002

Monthly update by Chief Darryl Perry or his designated representative on any significant adverse incidents/events involving personnel in the Kaua'i Police Department that could potentially impact the County, the Police Commission and the Kaua'i Police Department.

ES KPC 2018-012

Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (4), the purpose of this Executive Session is for the County Attorney to provide an update on the Department's handling of public complaints and an update on the Police Union stance on an officer versus officer complaint and to consult with its attorney as to its powers, duties, privileges, immunities and or liabilities as they relate to this agenda item.
(Deferred on April 27, 2018)

Vice Chair Hertog: Although this item was deferred on April 27, 2018, we're going to have to defer this item again for next month because Mr. Trask is not ready to talk to us about this one, so scratch this one off. Mercedes we are going to defer this item to the June 22, 2018 meeting.

Ms. Omo: Okay.

Vice Chair Hertog: We've covered item ES KPC 2018-013, so next up is items ES KPC 2018-015 and ES KPC 2018-016.

ES KPC 2018-015

New Formal Notarized Complaint No. KPC 2018-006 filed against an officer in the Kaua'i Police Department. The complainant alleges misconduct in the investigation of an unattended death. (Deferred on April 27, 2018)

ES KPC 2018-016

New Formal Notarized Complaint No. KPC 2018-007 filed against an officer in the Kaua'i Police Department. The complainant alleges that she and members of her family were forced to leave their family owned property without a signed warrant and was threatened by the officer that they would be arrested if they return to the property. (Deferred on April 27, 2018)

Vice Chair Hertog: We already handled items ES KPC 2018-018 and ES KPC 2018-019, so the last two items are as follows.

ES KPC 2018-020

Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4) the purpose of this Executive Session is for the Commission to consider the hire, evaluation, dismissal, or discipline of an officer or employee, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and liabilities as they may relate to the supervision of the Chief of Police.

Vice Chair Hertog: Translation for this item is how we are supposed to supervise the Chief when we don't have access to all of the information that we feel, we need. Okay, next item is ES KPC 2018-021.

ES KPC 2018-021

Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session meeting minutes of April 27, 2018, and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and or liabilities as they may relate to this agenda item.

Vice Chair Hertog: Can I get a motion to go back into Executive Session?

Ms. Adams: So moved.

Mr. Mince: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. Nays. Hearing none. The motion carries 5:0.

At 10:37 a.m. The Commissioners entered into Executive Session.

At 11:50 a.m. The Commissioners reconvened in Open Session.

Vice Chair Hertog: Mauna Kea, we have one last item to discuss.

KPC 2018-04

Discussion and possible decision-making on whether or not the Commission should form a Permitted Interaction Group to get a better understanding on how the recruitment process in the Kaua'i Police Department works and report its findings to the Commissioners at their next regularly scheduled monthly meeting.
(Deferred on April 27, 2018.)

Vice Chair Hertog: Before we had to go into Executive Session there was one item that we needed to discuss and that was item KPC 2018-04. It's a discussion on whether we are within our rights to ask for a PIG (Permitted Interaction Group) to look at the recruiting process in KPD.

Mr. Trask: You know, when I saw that agenda item to me the recruiting process is clearly an administrative matter. I don't see how you would have anything to do with the hiring. You can ask for reports about it from the Chief relative to how he does it but you cannot review, evaluate or prove that in any way, shape or form. Beyond that I'm not sure what-

Vice Chair Hertog: Okay, then our alternative is, if we think, we have some ideas on what we would like them to look at perhaps enhancing their recruiting process, would it be appropriate for Chair Bahouth to sign a letter over to the Chief to say Chief, we recommend that you look at this and leave it as that?

Mr. Trask: Sure, it's non-binding and it's not mandatory.

Vice Chair Hertog: Alright, that's what we wanted from you a decision on that. Are there any other discussion on that? If not, we can do the letter.

Mr. Trask: Just for clarification, in that communication, I think it would be well advised to make clear that it's not an order but a polite way-

Vice Chair Hertog: Right. Here are some things that we thought of and we recommend that you take a look at it; that kind of thing.

Mr. Trask: Right, I don't want the Department to feel-

Vice Chair Hertog: Obligated.

Mr. Trask: Yes, thank you.

Vice Chair Hertog: Okay. Next is the ratification.

RATIFY THE ACTIONS TAKEN IN EXECUTIVE SESSION

Vice Chair Hertog: Can I get a motion to ratify the actions taken in Executive Session?

Ms. Adams: So moved.

Mr. Morita: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. The motion carries unanimously by a voice vote of 4:0.

ADJOURNMENT

Vice Chair Hertog: Can I get a motion to adjourn?

Ms. Adams: So moved.

Mr. Morita: Second.

Vice Chair Hertog: All those in favor, please signify by saying aye. The motion carries unanimously by a voice vote of 4:0.

At 11:52 a.m. the meeting adjourned.

Submitted by:

Mercedes Omo
Commission Support Clerk

(x) Approved as circulated on: June 22, 2018

() Approved as amended. See minutes of _____ meeting.

Approved on:

Mary K. Hertog
Vice Chair Kaua'i Police Commission